

109TH CONGRESS
1ST SESSION

S. 547

To amend the Internal Revenue Code of 1986 to provide for employer retirement savings accounts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2005

Mr. THOMAS (for himself and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for employer retirement savings accounts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. EMPLOYER RETIREMENT SAVINGS ACCOUNTS.**

4 (a) IN GENERAL.—Subpart A of part 1 of subchapter
5 D of chapter 1 of the Internal Revenue Code of 1986 is
6 amended by inserting after section 401 the following new
7 section:

8 **“SEC. 401A. EMPLOYER RETIREMENT SAVINGS ACCOUNTS.**

9 “(a) IN GENERAL.—A defined contribution plan shall
10 not fail to meet the requirements of section 401(a) merely

1 because the plan includes an employer retirement savings
 2 account arrangement.

3 “(b) EMPLOYER RETIREMENT SAVINGS ACCOUNT
 4 ARRANGEMENT.—An employer retirement savings account
 5 arrangement is any arrangement which is part of a plan
 6 which meets the requirements of section 401(a)—

7 “(1) under which a covered employee may elect
 8 to have the employer make payments as contribu-
 9 tions to a trust under the plan on behalf of the em-
 10 ployee, or to the employee directly in cash,

11 “(2) under which amounts held by the trust
 12 which are attributable to employer contributions
 13 made pursuant to the employee’s election—

14 “(A) may not be distributable to partici-
 15 pants or other beneficiaries earlier than—

16 “(i) severance from employment,
 17 death, or disability,

18 “(ii) an event described in subsection
 19 (g),

20 “(iii) the attainment of age 59, or

21 “(iv) upon hardship of the employee,
 22 and

23 “(B) will not be distributable merely by
 24 reason of the completion of a stated period of

1 participation or the lapse of a fixed number of
 2 years,

3 “(3) which provides that an employee’s right to
 4 the employee’s accrued benefit derived from em-
 5 ployer contributions made to the trust pursuant to
 6 the employee’s election is nonforfeitable, and

7 “(4) which does not require, as a condition of
 8 participation in the arrangement, that an employee
 9 complete a period of service with the employer (or
 10 employers) maintaining the plan extending beyond
 11 the period permitted under section 410(a)(1) (deter-
 12 mined without regard to subparagraph (B)(i) there-
 13 of).

14 “(c) APPLICATION OF NONDISCRIMINATION STAND-
 15 ARDS.—

16 “(1) CONTRIBUTION PERCENTAGE REQUIRE-
 17 MENT.—An arrangement shall not be treated as an
 18 employer retirement savings account arrangement
 19 for any plan year unless—

20 “(A) the contribution percentage for eligi-
 21 ble highly compensated employees for the plan
 22 year does not exceed 200 percent of such per-
 23 centage for all other eligible employees for the
 24 preceding plan year, or

1 “(B) the contribution percentage of non-
 2 highly compensated employees for the preceding
 3 plan year exceeded 6 percent.

4 “(2) ALTERNATIVE METHODS OF MEETING
 5 NONDISCRIMINATION REQUIREMENTS.—

6 “(A) IN GENERAL.—An arrangement shall
 7 be treated as meeting the requirements of para-
 8 graph (1)(A) if such arrangement—

9 “(i) meets the contribution require-
 10 ments of subparagraph (B), and

11 “(ii) meets the notice requirements of
 12 subparagraph (D).

13 “(B) CONTRIBUTION REQUIREMENT.—The
 14 requirements of this subparagraph are met if,
 15 under the arrangement, the employer is re-
 16 quired to make contributions to a defined con-
 17 tribution plan on behalf of each eligible em-
 18 ployee who is not a highly compensated em-
 19 ployee in an amount equal to at least 3 percent
 20 of the employee’s compensation. For purposes
 21 of this subparagraph, elective deferrals and em-
 22 ployee contributions shall not be taken into ac-
 23 count in determining the amount of contribu-
 24 tions the employer makes to the plan.

1 “(C) SPECIAL RULES FOR MATCHING CON-
2 TRIBUTIONS.—

3 “(i) IN GENERAL.—If an employer
4 takes matching contributions into account
5 for purposes of subparagraph (B), the re-
6 quirements of such subparagraph shall be
7 treated as met only if the matching con-
8 tributions on behalf of each employee who
9 is not a highly compensated employee are
10 equal to 50 percent of the elective deferrals
11 of the employee to the extent that such
12 elective deferrals do not exceed 6 percent
13 of the employee’s compensation.

14 “(ii) ALTERNATIVE PLAN DESIGNS.—
15 If the rate of any matching contribution
16 with respect to any rate of elective deferral
17 is not equal to the percentage required
18 under clause (i), an arrangement shall not
19 be treated as failing to meet the require-
20 ments of clause (i) if—

21 “(I) the rate of an employer’s
22 matching contribution does not in-
23 crease as an employee’s rate of elec-
24 tive contributions increases, and

1 “(II) the aggregate amount of
2 matching contributions at such rate of
3 elective contribution is at least equal
4 to the aggregate amount of matching
5 contributions which would be made if
6 matching contributions were made on
7 the basis of the percentages described
8 in clause (i).

9 “(iii) RATE FOR HIGHLY COM-
10 PENSATED EMPLOYEES.—The require-
11 ments of this subparagraph are not met if,
12 under the arrangement, the rate of match-
13 ing contribution with respect to any elec-
14 tive deferral of a highly compensated em-
15 ployee at any rate of elective deferral is
16 greater than that with respect to an em-
17 ployee who is not a highly compensated
18 employee.

19 “(D) NOTICE REQUIREMENT.—An ar-
20 rangement meets the requirements of this sub-
21 paragraph if, under the arrangement, each em-
22 ployee eligible to participate is, within a reason-
23 able period before any year, given written notice
24 of the employee’s rights and obligations under
25 the arrangement which—

“(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

“(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

“(E) OTHER REQUIREMENTS.—

“(i) WITHDRAWAL AND VESTING RESTRICTIONS.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) unless the requirements of paragraphs (2) and (3) of subsection (b) are met with respect to all employer contributions (including matching contributions) taken into account in determining whether the requirements of subparagraph (B) are met.

“(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—An arrangement shall not be treated as meeting the requirements of subparagraph (B) unless such requirements are met without regard to section 401(l), and, for purposes of section 401(l),

1 employer contributions under subpara-
 2 graph (B) shall not be taken into account.

3 “(F) OTHER PLANS.—An arrangement
 4 shall be treated as meeting the requirements of
 5 subparagraph (B) if any other plan maintained
 6 by the employer meets such requirements with
 7 respect to employees eligible under the arrange-
 8 ment.

9 “(3) CONTRIBUTION PERCENTAGE.—For pur-
 10 poses of paragraph (1), the contribution percentage
 11 for an eligible employee for a specified group of em-
 12 ployees for a plan year shall be the average of the
 13 ratios (calculated separately for each employee in
 14 such group) of—

15 “(A) the sum of the elective deferrals,
 16 matching contributions, employee contributions,
 17 and qualified nonelective contributions paid
 18 under the plan on behalf of each such employee
 19 for such plan year, to

20 “(B) the employee’s compensation for such
 21 plan year.

22 “(4) SPECIAL RULES.—For purposes of this
 23 subsection—

24 “(A) MULTIPLE ARRANGEMENTS.—If 2 or
 25 more plans which include employer retirement

1 savings account arrangements are considered as
2 1 plan for purposes of section 401(a)(4) or
3 410(b), all such arrangements included in such
4 plans shall be treated as 1 arrangement.

5 “(B) EMPLOYEES IN MORE THAN 1 AR-
6 RANGEMENT.—If any highly compensated em-
7 ployee is a participant under 2 or more em-
8 ployer retirement savings account arrangements
9 of the employer, for purposes of determining
10 the contribution percentage with respect to such
11 employee, all such arrangements shall be treat-
12 ed as 1 arrangement.

13 “(C) USE OF CURRENT YEAR.—An em-
14 ployer may elect to apply paragraph (1) (A) or
15 (B) by using the plan year rather than the pre-
16 ceding plan year. An employer may change such
17 an election only with the consent of the Sec-
18 retary.

19 “(D) 1ST PLAN YEAR.—In the case of the
20 first plan year of any plan (other than a suc-
21 cessor plan), the amount taken into account as
22 the contribution percentage of nonhighly com-
23 pensated employees for the preceding plan year
24 shall be—

25 “(i) 3 percent, or

1 “(ii) if the employer makes an election
2 under this clause, the contribution percent-
3 age of nonhighly compensated employees
4 determined for such first plan year.

5 “(E) SPECIAL RULE FOR EARLY PARTICI-
6 PATION.—If an employer elects to apply section
7 410(b)(4)(B) in determining whether an em-
8 ployer retirement savings account arrangement
9 meets the requirements of section 410(b)(1),
10 the employer may, in determining whether the
11 arrangement meets the requirements of this
12 subsection, exclude from consideration all eligi-
13 ble employees (other than highly compensated
14 employees) who have not met the minimum age
15 and service requirements of section
16 410(a)(1)(A).

17 “(5) EXCEPTIONS.—

18 “(A) GOVERNMENTAL PLANS.—A govern-
19 mental plan (within the meaning of section
20 414(d)) maintained by a State or local govern-
21 ment or political subdivision thereof (or agency
22 or instrumentality thereof) shall be treated as
23 meeting the requirements of this subsection.

24 “(B) TAX EXEMPT PLANS.—

1 “(i) IN GENERAL.—A plan not de-
2 scribed in subparagraph (A) which is
3 maintained by an organization described in
4 section 501(c)(3) shall be treated as meet-
5 ing the requirements of this subsection for
6 any plan year if the plan provides that all
7 employees of such organization may elect
8 to have the employer make contributions of
9 more than \$200 pursuant to a salary re-
10 duction agreement if any employee of the
11 organization may elect to have the organi-
12 zation make contributions pursuant to
13 such agreement.

14 “(ii) EXCEPTION.—Clause (i) shall
15 not apply to any plan if under the plan—

16 “(I) matching contributions may
17 be made on behalf of any employee, or

18 “(II) an employee may make con-
19 tributions other than elective defer-
20 rals.

21 “(iii) EXCLUSION.—For purposes of
22 clause (i), there may be excluded any em-
23 ployee who is—

1 “(I) a participant in another em-
 2 ployer retirement savings account ar-
 3 rangement of the organization,

4 “(II) a nonresident alien de-
 5 scribed in section 410(b)(3)(C), or

6 “(III) subject to the conditions
 7 applicable under section 410(b)(4), a
 8 student performing services described
 9 in section 3121(b)(10) or an employee
 10 who normally works less than 20
 11 hours per week.

12 “(6) COORDINATION WITH SUBSECTION
 13 (a)(4).—A cash or deferred arrangement shall be
 14 treated as meeting the requirements of subsection
 15 (a)(4) with respect to contributions if the require-
 16 ments of paragraph (1) are met.

17 “(d) OTHER REQUIREMENTS.—For purposes of this
 18 section—

19 “(1) BENEFITS (OTHER THAN MATCHING CON-
 20 TRIBUTIONS) MUST NOT BE CONTINGENT ON ELEC-
 21 TION TO DEFER.—An employer retirement savings
 22 account arrangement of any employer shall not be
 23 treated as such an arrangement if any other benefit
 24 is conditioned (directly or indirectly) on the em-
 25 ployee electing to have the employer make or not

1 make contributions under the arrangement in lieu of
 2 receiving cash. The preceding sentence shall not
 3 apply to any matching contribution made by reason
 4 of such an election.

5 “(2) COORDINATION WITH OTHER PLANS.—Any
 6 employer contribution made pursuant to an employ-
 7 ee’s election under an employer retirement savings
 8 account arrangement shall not be taken into account
 9 for purposes of determining whether any other plan
 10 meets the requirements of section 401(a) or 410(b).
 11 This paragraph shall not apply for purposes of de-
 12 termining whether a plan meets the average benefit
 13 requirement of section 410(b)(2)(A)(ii).

14 “(e) DEFINITIONS.—For purposes of this section—

15 “(1) ELIGIBLE EMPLOYEE.—The term ‘eligible
 16 employee’ means any employee who is eligible to
 17 benefit under the employer retirement savings ac-
 18 count arrangement.

19 “(2) HIGHLY COMPENSATED EMPLOYEE.—For
 20 purposes of this subsection, the term ‘highly com-
 21 pensated employee’ has the meaning given such term
 22 by section 414(q).

23 “(3) MATCHING CONTRIBUTION.—The term
 24 ‘matching contribution’ means—

1 “(A) any employer contribution made to a
 2 defined contribution plan on behalf of an em-
 3 ployee on account of an employee contribution
 4 made by such employee, and

5 “(B) any employer contribution made to a
 6 defined contribution plan on behalf of an em-
 7 ployee on account of an employee’s elective de-
 8 ferral.

9 “(4) ELECTIVE DEFERRAL.—The term ‘elective
 10 deferral’ means any employer contribution described
 11 in section 402(g)(3).

12 “(5) QUALIFIED NONELECTIVE CONTRIBU-
 13 TIONS.—The term ‘qualified nonelective contribu-
 14 tion’ means any employer contribution (other than a
 15 matching contribution) with respect to which—

16 “(A) the employee may not elect to have
 17 the contribution paid to the employee in cash
 18 instead of being contributed to the plan, and

19 “(B) the requirements of paragraphs (2)
 20 and (3) of subsection (b) are met.

21 “(6) COMPENSATION.—The term ‘compensa-
 22 tion’ has the meaning given such term by section
 23 414(s).

24 “(f) ARRANGEMENT NOT DISQUALIFIED IF EXCESS
 25 CONTRIBUTIONS DISTRIBUTED.—

1 “(1) IN GENERAL.—An employer retirement
2 savings account arrangement shall not be treated as
3 failing to meet the requirements of subsection
4 (c)(1)(A) for any plan year if, before the close of the
5 following plan year—

6 “(A) the amount of the excess contribu-
7 tions for such plan year (and any income allo-
8 cable to such contributions) is distributed, or

9 “(B) to the extent provided in regulations,
10 the employee elects to treat the amount of the
11 excess contributions as an amount distributed
12 to the employee and then contributed by the
13 employee to the plan.

14 Any distribution of excess contributions (and in-
15 come) may be made without regard to any other pro-
16 vision of law.

17 “(2) EXCESS CONTRIBUTIONS.—For purposes
18 of paragraph (1), the term ‘excess contributions’
19 means, with respect to any plan year, the excess
20 of—

21 “(A) the aggregate amount of employer
22 contributions actually paid over to the trust on
23 behalf of highly compensated employees for
24 such plan year, over

1 “(B) the maximum amount of such con-
 2 tributions permitted under the limitations of
 3 subsection (c)(1)(A) (determined by reducing
 4 contributions made on behalf of highly com-
 5 pensated employees in order of the contribution
 6 percentages beginning with the highest of such
 7 percentages).

8 “(3) METHOD OF DISTRIBUTING EXCESS CON-
 9 TRIBUTIONS.—Any distribution of the excess con-
 10 tributions for any plan year shall be made to highly
 11 compensated employees on the basis of the amount
 12 of contributions by, or on behalf of, each of such em-
 13 ployees.

14 “(4) ADDITIONAL TAX UNDER SECTION 72(t)
 15 NOT TO APPLY.—No tax shall be imposed under sec-
 16 tion 72(t) on any amount required to be distributed
 17 under this subsection.

18 “(5) TREATMENT OF MATCHING CONTRIBU-
 19 TIONS FORFEITED BY REASON OF EXCESS DEFER-
 20 RAL OR CONTRIBUTION.—For purposes of subsection
 21 (b)(3), a matching contribution shall not be treated
 22 as forfeitable merely because such contribution is
 23 forfeitable if the contribution to which the matching
 24 contribution relates is treated as an excess contribu-

1 tion under paragraph (2) or an excess deferral under
2 section 402(g)(2)(A).

3 “(6) CROSS REFERENCE.—For excise tax on
4 certain excess contributions, see section 4979.

5 “(g) DISTRIBUTIONS UPON TERMINATION OF
6 PLAN.—

7 “(1) IN GENERAL.—An event described in this
8 subsection is the termination of the plan without es-
9 tablishment or maintenance of another defined con-
10 tribution plan (other than an employee stock owner-
11 ship plan as defined in section 4975(e)(7)).

12 “(2) DISTRIBUTIONS MUST BE LUMP SUM DIS-
13 TRIBUTIONS.—

14 “(A) IN GENERAL.—A termination shall
15 not be treated as described in paragraph (1)
16 with respect to any employee unless the em-
17 ployee receives a lump sum distribution by rea-
18 son of the termination.

19 “(B) LUMP-SUM DISTRIBUTION.—For pur-
20 poses of this paragraph, the term ‘lump-sum
21 distribution’ has the meaning given such term
22 by section 402(e)(4)(D) (without regard to sub-
23 clauses (I), (II), (III), and (IV) of clause (i)
24 thereof). Such term includes a distribution of
25 an annuity contract from—

1 “(i) a trust which forms a part of a
 2 plan described in section 401(a) and which
 3 is exempt from tax under section 501(a),
 4 or

5 “(ii) an annuity plan described in sec-
 6 tion 403(a).

7 “(h) SPECIAL RULES FOR SMALL EMPLOYERS.—

8 “(1) IN GENERAL.—An arrangement main-
 9 tained by an eligible employer shall not fail to meet
 10 the requirements of this section merely because con-
 11 tributions under the arrangement on behalf of any
 12 employee are made to an individual retirement plan
 13 (as defined under section 7701(a)(37)) established
 14 on behalf of the employee.

15 “(2) ELIGIBLE EMPLOYER.—For purposes of
 16 paragraph (1), the term ‘eligible employer’ means,
 17 with respect to any year, an employer which had no
 18 more than 10 employees who received at least
 19 \$5,000 of compensation from the employer for the
 20 preceding year. An eligible employer who establishes
 21 and maintains an arrangement under this subsection
 22 for 1 or more years and who fails to be an eligible
 23 employer for any subsequent year shall be treated as
 24 an eligible employer for the 2 years following the
 25 last year the employer was an eligible employer. If

1 such failure is due to any acquisition, disposition, or
 2 similar transaction involving an eligible employer,
 3 the preceding sentence shall not apply.

4 “(i) REGULATIONS.—The Secretary shall prescribe
 5 such regulations as may be necessary to carry out the pur-
 6 poses of this section, including regulations permitting ap-
 7 propriate aggregation of plans and contributions.

8 “(j) TRANSITION RULES.—

9 “(1) DEEMED ERSAS.—Any arrangement
 10 which, as of December 31, 2005—

11 “(A) is part of a plan meeting the require-
 12 ments of section 401(a), and

13 “(B) is—

14 “(i) a qualified cash or deferred ar-
 15 rangement (as defined in section
 16 401(k)(2)), or

17 “(ii) subject to the requirements of
 18 section 401(m),

19 shall be treated as an employer retirement savings
 20 account arrangement and subject to the require-
 21 ments of this title applicable to such an arrangement
 22 for plan years beginning after December 31, 2005.

23 “(2) ELECTABLE ERSAS.—

24 “(A) IN GENERAL.—If an employer makes
 25 an election under this paragraph with respect to

any applicable arrangement, such arrangement shall be treated as an employer retirement savings account arrangement and subject to the requirements of this title applicable to such an arrangement for plan years beginning after December 31, 2005.

“(B) APPLICABLE ARRANGEMENT.—For purposes of subparagraph (A), the term ‘applicable arrangement’ means an arrangement which, as of December 31, 2005, is—

“(i) an arrangement under which amounts are contributed by an individual’s employer for an annuity contract described in section 403(b),

“(ii) an eligible deferred compensation plan (within the meaning of section 457(b)) maintained by an eligible employer described in section 457(e)(1)(A),

“(iii) a simplified employee pension (within the meaning of section 408(k)) for which an election is in effect under paragraph (6) thereof, or

“(iv) a simple retirement account (within the meaning of section 408(p)).”.

1 (b) ELECTIVE DEFERRALS.—Section 402 of such
2 Code is amended—

3 (1) in subsection (e)(3), by inserting “, an em-
4 ployer retirement savings account arrangement (as
5 defined in section 401A(b)),” after “section
6 401(k)(2))”, and

7 (2) in subsection (g)(3)(A), by inserting “, or
8 an employer retirement savings account arrangement
9 (as defined in section 401A(b)),” before “to the ex-
10 tent”.

11 (c) TERMINATION OF CONTRIBUTIONS TO OTHER
12 PLANS.—

13 (1) 401(k) PLANS.—Section 401(k) of such
14 Code is amended by adding at the end the following
15 new paragraph:

16 “(13) TERMINATION.—This subsection shall not
17 apply to any plan year beginning after December 31,
18 2005.”.

19 (2) 403(b) ANNUITY CONTRACTS.—Section
20 403(b) of such Code is amended by adding at the
21 end the following new paragraph:

22 “(14) TERMINATION.—No elective deferral (as
23 defined in section 402(g)(3)) may be contributed
24 under this subsection by an employer, and no
25 amount may be transferred under an eligible roll-

1 over, for an annuity contract after December 31,
2 2006.”.

3 (3) GOVERNMENTAL 457 PLANS.—Section 457
4 of such Code is amended by adding at the end the
5 following new subsection:

6 “(h) TERMINATION.—No amount may be deferred
7 under this subsection under a plan maintained by an eligi-
8 ble employer described in subsection (e)(1)(A), and no
9 amount may be transferred under an eligible rollover to
10 an eligible deferred compensation plan maintained by such
11 an employer, after December 31, 2006.”.

12 (4) SARSEPS.—Subparagraph (H) of section
13 408(k)(6) of such Code is amended by adding at the
14 end the following new sentence: “No amount may be
15 contributed under this paragraph to a simplified em-
16 ployee pension by an employer, and no amount may
17 be transferred to a simplified employee pension
18 maintained under this paragraph under an eligible
19 rollover, after December 31, 2006.”.

20 (5) SIMPLE IRAS.—Section 408(p) of such Code
21 is amended by adding at the end the following new
22 paragraph:

23 “(11) TERMINATION.—No amount may be con-
24 tributed under this paragraph to a simple retirement
25 account after December 31, 2006.”.

1 (d) OTHER CONFORMING CHANGES.—

2 (1) Section 401 of such Code is amended by
3 striking subsection (m).

4 (2) Section 7701(j) of such Code (relating to
5 tax treatment of Federal Thrift Savings Fund) is
6 amended—

7 (A) in paragraph (1)(C), by striking “sec-
8 tion 401(k)(4)(B)” and inserting “section
9 401A(d)(1)”, and

10 (B) in paragraph (2), by striking “section
11 401(k)” and inserting “section 401A”.

12 (3) The Secretary of the Treasury shall, not
13 later than 90 days after the date of the enactment
14 of this Act, submit such technical and other con-
15 forming changes as are necessary to carry out the
16 amendments made by this section.

17 (e) CLERICAL AMENDMENT.—The table of sections
18 for subpart A of part 1 of subchapter D of chapter 1 of
19 such Code is amended by inserting after the item relating
20 to section 401 the following new item:

“Sec. 401A. Employer Retirement Savings Accounts.”.

21 (f) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to years beginning after December
23 31, 2005.

24 (g) PROVISIONS RELATING TO PLAN AMEND-
25 MENTS.—

1 (1) IN GENERAL.—If this subsection applies to
2 any plan or contract amendment—

3 (A) such plan or contract shall be treated
4 as being operated in accordance with the terms
5 of the plan during the period described in para-
6 graph (2)(C)(i), and

7 (B) except as provided by the Secretary of
8 the Treasury, such plan shall not fail to meet
9 the requirements of section 401A of the Inter-
10 nal Revenue Code of 1986 by reason of such
11 amendment.

12 (2) AMENDMENTS TO WHICH SECTION AP-
13 PLIES.—

14 (A) IN GENERAL.—This subsection shall
15 apply to any amendment to any plan or annuity
16 contract which is made—

17 (i) pursuant to any amendment made
18 by this section, or pursuant to any regula-
19 tion issued by the Secretary of the Treas-
20 ury or the Secretary of Labor under this
21 section, and

22 (ii) on or before the last day of the
23 first plan year beginning on or after Janu-
24 ary 1, 2007.

1 (B) GOVERNMENTAL PLAN.—In the case
 2 of a governmental plan (as defined in section
 3 414(d) of the Internal Revenue Code of 1986),
 4 subparagraph (A) shall be applied by sub-
 5 stituting “2009” for “2007”.

6 (C) CONDITIONS.—This subsection shall
 7 not apply to any amendment unless—

8 (i) during the period—

9 (I) beginning on the date the leg-
 10 islative or regulatory amendment de-
 11 scribed in subparagraph (A)(i) takes
 12 effect (or in the case of a plan or con-
 13 tract amendment not required by such
 14 legislative or regulatory amendment,
 15 the effective date specified by the
 16 plan), and

17 (II) ending on the date described
 18 in subparagraph (A)(ii) (or, if earlier,
 19 the date the plan or contract amend-
 20 ment is adopted), the plan or contract
 21 is operated as if such plan or contract
 22 amendment were in effect; and

23 (ii) such plan or contract amendment
 24 applies retroactively for such period.

○